United Nations A/C.3/63/SR.22

General Assembly
Sixty-third session

Official Records

Distr.: General
2 February 2009
English
Original: French

Third Committee

Summary record of the 22nd meeting
Held at Headquarters, New York, on Thursday, 23 October 2008, at 10 a.m.

Chairman:	Mr. Majoor	(Netherlands)
later:	Mr. Peralta (Vice-Chairman)	(Paraguay)
later:	Mr. Majoor (Chairman)	(Netherlands)

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08-56526 (E)

The meeting was called to order at 10.05 a.m.

Agenda item 64: Promotion and protection of human rights (*continued*) (A/63/123, A/63/281-S/2008/431 and A/63/370-S/2008/614)

(a) Implementation of human rights instruments (*continued*) (A/63/40 (vols. I and II), A/63/44, A/63/48, A/63/137, A/63/175, A/63/220 and A/63/280)

(c) Human rights situations and reports of special rapporteurs and representatives (*continued*) (A/63/322, A/63/326, A/63/332, A/63/341, A/63/356 and A/63/459)

(e) Convention on the Rights of Persons with Disabilities (*continued*) (A/63/264 and Corr.1)

1. **Mr. Ojea Quintana** (Special Rapporteur on the situation of human rights in Myanmar), introducing his report (A/63/341), said that some paragraphs no longer applied. On 23 September 2008, the Government of Myanmar had released 9,002 prisoners, including seven prisoners of conscience. On 8 October 2008, Aung San Suu Kyi had initiated judicial proceedings.

2. As stated in his report to the Human Rights Council (A/HRC/8/12), the best way to discharge his mandate and promote human rights was to seek to establish good working relations with the authorities in Myanmar and to cooperate with them. In addition, he was working closely with the United Nations system, in particular the Special Adviser of the Secretary-General for Myanmar and the Office of the United Nations High Commissioner for Human Rights (OHCHR). He had travelled to Myanmar in August 2008 and was looking forward to returning there. He was pursuing his mission without naivety, however, since he was aware that for each step forward, another could sometimes be taken in the opposite direction.

3. It would take generations to restore democracy; in the meantime, tangible, achievable, step-by-step benchmarks should be fixed, assistance and expertise provided, and efforts made to develop cooperation. While it was true that it was the duty of Governments to promote and protect human rights, they could not do so without the international community's help. Four core human rights elements, reflected in the report as recommendations, should enable the Government to advance towards democracy; Member States should assist it in implementing those recommendations before the 2010 elections.

4. The people of Myanmar should have the right to vote freely without being in the grip of hunger or lacking adequate housing, but for many, such was not the case. According to the Tripartite Core Group's press release of 30 September 2008, only $240 million of the $482 million needed to assist the survivors of Cyclone Nargis had been received. While other regions of the world had also been struck by natural disasters, that was no reason for the international community to forget the victims in Myanmar. It was disturbing to learn that, in the wake of the disaster, families had been forced to return to their villages of origin, which had however been totally destroyed. The authorities, which were responsible for recovery operations, must respect the fundamental right of the persons concerned to decide whether they wanted to return to their villages or to resettle elsewhere.

5. Another source of concern was the impending food crisis in Chin State, where more than 20 per cent of the population was in immediate need of food aid. Food and health problems, and humanitarian needs in general, had to be tackled as a matter of urgency, possibly along the lines of the model of successful collaboration provided by the Tripartite Core Group.

6. The Myanmar army and non-State armed groups, whose practices were unacceptable, must stop attacking civilians.

7. It was not enough for the General Assembly to adopt resolutions; it must provide the means for their implementation, not only by releasing human and financial resources, but also by offering space and opportunities for the countries concerned to work together with the special rapporteurs. He called on all Member States to cooperate with him in his efforts to improve the human rights situation of the people of Myanmar, whom he commended for their courage and patience.

8. **Mr.** Thaung **Tun** (Myanmar) welcomed the Special Rapporteur's acknowledgement that Myanmar was going through a unique moment in its history. Significant strides had been taken under the seven-step road map, including the approval by referendum, by an overwhelming majority, of the new Constitution, which should be followed by multi-party elections in 2010. Democracy could thrive only in an atmosphere of peace and stability; the transition was never easy and

could not be imposed from outside. In a country containing more than 100 ethnic groups, national unity was the key to establishing a modern democratic nation.

9. Notwithstanding the commendable willingness to cooperate shown by the Special Rapporteur, who had impressed upon the Human Rights Council and the Committee the importance of assisting Myanmar in better protecting and promoting human rights, the report seemed ambivalent.

10. In the first part, after acknowledging significant developments in the situation, the Special Rapporteur passed judgement by stating in paragraph 18 that the Government bore primary responsibility for addressing, in cooperation with the international community, the human rights challenges posed by Cyclone Nargis. Contrary to what had been alleged by the media, however, the Government had reacted immediately to the disaster by requesting assistance from the United Nations, which had then launched a flash appeal, and from the Central Emergency Response Fund (CERF). Prior to that it had authorized the delivery of humanitarian aid. It had sent more than 2,000 doctors and nurses and four hospital ships to the delta region, as well as medical teams from several Asian and European countries; over 100 non-governmental and community-based organizations and United Nations specialized agencies had participated in the relief efforts. The Secretary-General himself had visited Myanmar at the end of May and had paid tribute to the courage and resilience of the population and the smooth operation of the relief programme put in place by the Government with the help of the international community. The Tripartite Core Group's report contained similar praise for Myanmar's response to the disaster.

11. The second part of the report focused on substantive issues and referred in particular to irregularities alleged to have surrounded the holding of the referendum on the new Constitution. It also contained information emanating from dissidents residing outside the country concerning the protection of civilians and ethnic minorities. No credence should be given to baseless accusations and unverified statements. In the same vein, it was regrettable that unfounded charges of arbitrary land confiscation should be echoed by the Special Rapporteur.

12. Of course, his purpose was not to belittle the report but to remind everyone that the exercise of human rights called for a collective commitment and an effort to understand each situation. It was important to act with fairness and oppose politicization and selectivity. The newly-launched universal periodic review was a step in the right direction in that regard.

13. Only cooperation could lead to better promotion and protection of human rights. Myanmar was committed to cooperating constructively with the United Nations. While it was essential that special rapporteurs and Governments collaborated with one another, no reliance should be placed on distorted information and certain persons' allegations.

14. **Mr. Díaz Bartolomé** (Argentina) expressed appreciation to the Special Rapporteur. He hoped that his future work would contribute to the promotion and protection of human rights in Myanmar. Argentina supported an extension of the Special Rapporteur's mandate, as part of the reform of thematic mandates launched by the Human Rights Council.

15. **Mr. Heaton** (Canada), noting that both the process of framing the convention and the referendum on it had been deeply flawed, asked what action the Special Rapporteur would recommend to ensure that the 2010 elections went smoothly. Moreover, human rights defenders and opponents of the regime were often subject to arbitrary detention or arrest and prisoners of conscience were treated like common criminals, which meant that they had a criminal record and were thus prevented from taking part in elections. He therefore wished to know how it could be ensured that all legitimate political actors, including Aung San Suu Kyi, could participate in the 2010 elections.

16. **Ms. Challacombe** (United Kingdom) stressed the usefulness of the Special Rapporteur's report despite his not having enjoyed all the freedom needed to prepare it, and recalled the various unacceptable human rights violations mentioned therein. She wished to know whether the current regime was willing and able to implement the recommendations set out in the report and the many relevant Human Rights Council and General Assembly resolutions. To be credible, the authorities must take tangible steps to promote democracy and national reconciliation, in particular by releasing political prisoners, starting a genuine dialogue with all stakeholders and cooperating with United Nations representatives. Lastly, she asked

whether the Special Rapporteur hoped to return soon to Burma and, if so, whether he expected to be able to travel to all areas and to report in depth and in detail.

17. **Mr.** Thaung **Tun** (Myanmar), speaking on a point of order, pointed out to the representative of the United Kingdom and at the same time reminded all delegations that his country had changed name 20 years previously and that the official name should therefore be used.

18. **Mr. Rothville** (New Zealand) called on the Government of Myanmar to do more to respect human rights, in particular by releasing all political prisoners immediately and unconditionally. He wished to know how the international community could ensure that the authorities complied with the recommendations addressed to them. He asked the Special Rapporteur to clarify the meaning of paragraph 9 of his report and to state how the international community could assist in that regard. Lastly, he wished to know how the Special Rapporteur planned to strengthen in-country engagement and when he intended to request permission to visit each of the areas inhabited by ethnic minorities.

19. **Mr. Okuda** (Japan) expressed the hope that the Special Rapporteur would be able to continue visiting Myanmar and promoting democratization in the country. He welcomed the release of 9,000 political prisoners and looked forward to further gestures of national reconciliation. He asked the Special Rapporteur about his plans in the coming months, the aims of his next visit to Myanmar and the steps that he expected the Government of Myanmar to take to ensure free and fair elections in 2010.

20. **Ms. Nassau** (Australia) said she agreed with the Special Rapporteur that the ongoing detention of Aung San Suu Kyi and other political prisoners was an impediment to political reform and shared his concerns about the implications of the flawed referendum process for the 2010 elections. She emphasized the importance of his four core human rights elements and asked what he was planning to do to help the Government of Myanmar implement them.

21. **Mr. Gonnet** (France), speaking on behalf of the European Union, commended the Special Rapporteur for adopting a strategy based on cooperation with the authorities of Myanmar, which he could be counted on to adjust according to needs. On the subject of the four core elements, he wished to know what the Special Rapporteur's recommendations were with regard to the revision of legislation; how he planned to achieve the goals set in respect of the progressive release of political prisoners, freedom of movement for certain political leaders and improved prison conditions; what capacity-building measures he suggested to ease the transition towards a multi-party system and good governance; and at what speed the changes needed to ensure the independence of the judicial system could be made.

22. **Ms. Yetken** (United States of America) asked the Special Rapporteur whether, in view of the flaws in the referendum, the Constitution could truly form the basis of a democratic process; whether there was not a human rights imperative to call for the immediate rather than the progressive release of political prisoners; and whether the Burmese Government could collaborate more with the international community to aid the victims of Cyclone Nargis. She thanked the Special Rapporteur for concerning himself with the civilian victims of armed conflict and the Muslim community in Rakhine State. She urged the Burmese Government to cooperate fully with the Special Rapporteur and to provide him with the access he needed to carry out his mandate.

23. **Mr.** Thaung **Tun** (Myanmar), speaking on a point of order, again emphasized that speakers should refer to his country by its official name.

24. **Mr. Kamínek** (Czech Republic) welcomed the cooperation offered by Myanmar and asked the Special Rapporteur what steps the country could take to bring its legislation into line with its international obligations and how the international community could assist Myanmar in that regard.

25. **Mr. Pramudwinai** (Thailand) welcomed the constructive approach based on cooperation and trust adopted by the Special Rapporteur and encouraged him to continue along the same lines.

26. **Mr. Ojea Quintana** (Special Rapporteur on the situation of human rights in Myanmar) said that, like the representative of Myanmar, he was attached to the principle of cooperation set out in the Charter of the United Nations, which also placed the entire international community under an obligation to respect and protect human rights. His mission had been fruitful because he had been able to meet with political prisoners, build a relationship based on trust and cooperation with the authorities of Myanmar, and

identify those persons who could implement the anticipated changes. He hoped by the end of 2008 to be able to supplement that brief visit by a longer mission and to travel then to several areas in the country where the human rights situation was complex. He also hoped, with the agreement of the authorities of Myanmar, to meet all those who wished to talk about the human rights situation in the country.

27. With regard to the four core elements to be implemented before the 2010 elections, he reaffirmed that all arbitrarily detained political prisoners must be released, that the legislative reform must aim to suppress any text that might offer a justification for a restriction of human rights and fundamental freedoms, and that everything must be done to ensure the independence and impartiality of the judicial system. It was the duty of the Government of Myanmar to implement those recommendations upon its receipt of the report; he called on the international community to assist it in that regard.

28. **Mr. Muntarbhorn** (Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea) noted that the national authorities had cooperated relatively well with the United Nations agencies and other entities that had intervened following the floods of August 2007. However, the authorities had declined to cooperate with him in the context of his mandate and the human rights situation in the country remained precarious. As a result of the country's highly centralized and hierarchical structure, all its resources, including food resources, were being diverted by the ruling elite and the military, to the detriment of general development. A study conducted by the World Food Programme (WFP) and the Food and Agriculture Organization of the United Nations (FAO) as part of an agreement on humanitarian assistance stressed the fragility of the food situation and, in particular, the deteriorating situation of children. The distribution of food aid remained problematic and food security was far from assured.

29. Civil and political rights were extremely limited. The media were subject to strict controls and freedom of belief existed only in theory. Practices such as public executions maintained a climate of insecurity. Conditions of detention were extremely harsh and the cases of abuse many. In addition, the national authorities had been engaged in the abduction of foreign nationals. Furthermore, population movements inside the country were strictly regulated, except when people were displaced for political or economic reasons. Those who sought refuge abroad were more severely punished.

30. In the short term, the Democratic People's Republic of Korea should ensure food security in the country with the assistance of humanitarian agencies, end the punishment of asylum-seekers returned from abroad, put a stop to public executions, cooperate on the issue of abducted foreign nationals, and invite him to enter the country to assess the situation on the ground.

31. In the longer term, the country should ensure more equitable development by transferring resources currently allocated to the militarization process, achieve food security through a policy of sustainable agricultural development involving the entire population, guarantee respect for the rule of law and the security of the person by modernizing the legal and prison systems, ensure that all perpetrators of violence were brought to justice, strengthen the protection of human rights in accordance with the four instruments to which it was a party, in collaboration with the relevant treaty bodies, and request technical assistance for that purpose from OHCHR.

32. He asked the international community to support his recommendations by allowing the United Nations system to adopt a calibrated response to the long-standing violations in the country.

33. **Ms. Challacombe** (United Kingdom) welcomed the work of the Special Rapporteur. Although he had been unable to enter the Democratic People's Republic of Korea to gather first-hand information, he had provided an objective overview of the alarming human rights situation in the country, which refused to cooperate with the international community on the serious and systematic human rights violations that occurred there. That said, there had been reports of a number of improvements, for example, in the treatment of persons with disabilities and prisoners. She wondered whether the Special Rapporteur had seen similar reports and, if so, whether he gave them any credence.

34. The United Kingdom was also concerned about the fate of exiles who returned to the Democratic People's Republic of Korea. She wished to know whether the Special Rapporteur had been in contact with the host countries or with the Office of the United Nations High Commissioner for Refugees (UNHCR) in

order to ensure that international law and the principle of non-refoulement were applied to individuals from the Democratic People's Republic of Korea.

35. **Mr. Heaton** (Canada) commended the work of the Special Rapporteur. He shared the view that it was important to underline the systematic and increasing number of human rights violations in the Democratic People's Republic of Korea. That said, he was encouraged that WFP had been granted increased access to the country; he hoped that would pave the way for enhanced cooperation. With regard to the Special Rapporteur's recommendations concerning steps that the international community could take to improve the human rights situation in the Democratic People's Republic of Korea, his delegation would appreciate examples of the principle of maximizing dialogue in order to promote dispute resolution and enlarge the space for human rights discourse. Furthermore, since the Democratic People's Republic of Korea would be addressed under the universal periodic review mechanism in 2009, Canada wished to be informed of any offers of technical assistance which the country might agree to consider.

36. **Ms. Park** Enna (Republic of Korea) welcomed the Special Rapporteur's efforts to fulfil his mandate through his visits to Japan, Mongolia and the Republic of Korea. While welcoming the progress made in some areas in the Democratic People's Republic of Korea, her delegation remained concerned about the disregard for human rights in the country. She hoped that the Democratic People's Republic of Korea would cooperate with the Special Rapporteur with a view to improving the situation. Citing paragraph 37 of the report on the situation of human rights in the Democratic People's Republic of Korea (A/63/322), she asked the Special Rapporteur to provide a more detailed picture of the human rights situation of refugees *sur place* and indicate what should be done to better protect their rights. Furthermore, referring to the second recommendation contained in paragraph 63 of the report, she sought clarification of the principle of non-refoulement and its application in practice.

37. **Mr. Okuda** (Japan) welcomed the report of the Special Rapporteur, with whom Japan would continue to cooperate closely. The human rights situation in the Democratic People's Republic of Korea remained alarming in a number of respects. Japan therefore fully supported the recommendation that the Democratic People's Republic of Korea should address the root causes of refugee outflows, refrain from punishing those who left the country without permission, and cooperate transparently and accountably to resolve the issue of foreign nationals abducted by it. With regard to the latter, his delegation noted that the position of Japan's new Government was identical to that of its previous Government, namely that the Democratic People's Republic of Korea should establish without delay a committee with the necessary authority to investigate the abduction of Japanese citizens, in line with the terms agreed by the two parties in August 2008. His delegation also called on the Democratic People's Republic of Korea to grant the Special Rapporteur access to its territory and to conduct a constructive dialogue with him and the United Nations, particularly OHCHR. In that respect, his delegation wished to know how OHCHR could help the Democratic People's Republic of Korea promote and protect the rights of its citizens. Furthermore, his delegation wished to know the Special Rapporteur's opinion with respect to strengthening the Committee's role in light of his recommendation that the United Nations should adopt a calibrated approach towards the worrying human rights situation in the Democratic People's Republic of Korea.

38. **Ms. Plaisted** (United States of America) said that the Special Rapporteur's determination was all the more remarkable given that the Democratic People's Republic of Korea had refused to cooperate with him or grant him access to its territory since the establishment of his mandate in 2004. Despite the progress made in international consultations, the human rights situation remained grave on many fronts, particularly with regard to political and economic freedoms. She would be particularly interested to know the Special Rapporteur's views on the situation of refugees from the Democratic People's Republic of Korea, particularly from the viewpoint of the persecution they sometimes faced on their return, their protection in third countries, and the status of children born abroad. She commended the Special Rapporteur for calling on both the Democratic People's Republic of Korea and the international community to address the impunity enjoyed by perpetrators of human rights violations in the Democratic People's Republic of Korea and asked whether he had any suggestions regarding multilateral action that could be taken in that respect. The Democratic People's Republic of Korea would continue to be ostracized by the international community, including by the United States, until its

human rights situation improved. The United States would continue to explore concrete ways to address the various issues involved.

39. **Mr. Kaminek** (Czech Republic) called on the Government of the Democratic People's Republic of Korea to cooperate with the Special Rapporteur, to whom he paid tribute. In light of the continuing serious and systematic human rights violations in the country, his delegation wondered whether the Special Rapporteur saw any space for the application of the principle of the responsibility to protect, outlined in the 2005 World Summit Outcome and mentioned in Security Council resolution 1674 (2006). Referring to two written communications sent by the Special Rapporteur, one on public executions and the other on the safety of nationals of the Democratic People's Republic of Korea who had been returned to their country and both of which remained unanswered, he said that his delegation also wondered whether there might be a trend towards treating refugees more harshly.

40. *Mr. Peralta (Paraguay), Vice-Chairman, took the Chair.*

41. **Mr. Kim** Song Chol (Democratic People's Republic of Korea) categorically rejected the Special Rapporteur's report on the situation of human rights in his country, which spun a politically motivated web of lies that reflected the hostility of the United States towards the Democratic People's Republic of Korea and the politicization of human rights by the European Union. The Democratic People's Republic of Korea would continue to refuse to recognize the Commission on Human Rights resolution establishing the Special Rapporteur's mandate. It was futile and unrealistic for the West to believe that by exerting pressure on the Democratic People's Republic of Korea it could make the Government deviate from its objective of developing socialism, which guaranteed the human rights and fundamental freedoms of the people of the Democratic People's Republic of Korea. Moreover, he denounced the Japanese delegation's repeated attempts to manipulate the issue of the abduction of foreign nationals.

42. **Mr. Gonnet** (France), speaking on behalf of the European Union, called on the Democratic People's Republic of Korea to cooperate with the Special Rapporteur, whose work he commended, and, in particular, to open its borders to him. While the Democratic People's Republic of Korea had recently submitted two periodic reports to the Committee on the Rights of the Child and had authorized humanitarian agencies to intervene in the regions flooded in August 2007, the human rights situation remained very critical and required constant attention. The European Union wondered how the international community could encourage the Democratic People's Republic of Korea to cooperate with the Special Rapporteur and to what extent progress in the Six-Party Talks, which included a human rights component, could impact positively on the human rights situation in the country. The European Union also wondered how the technical assistance offered by OHCHR could promote comprehensive justice sector reform in the Democratic People's Republic of Korea and what steps were planned to ensure that the country safeguarded the rights of women, children and other vulnerable groups.

43. *Mr. Majoor (Netherlands) resumed the Chair.*

44. **Mr. Muntarbhorn** (Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea) said that he had always sought to assess the human rights situation in the Democratic People's Republic of Korea in a constructive manner and that he had afforded the country many opportunities to engage in a dialogue with the United Nations. A number of encouraging developments had come to light, in addition to those noted by delegations: the Democratic People's Republic of Korea was now a party to four human rights treaties, several counter-narcotics instruments and the Convention on the Rights of the Child, which was the basis for any intervention to assist the very young; a new national law had improved conditions for persons with disabilities and the country was also opening up to foreign assistance in the area of related infrastructure; and the Democratic People's Republic of Korea was stepping up its cooperation with the United Nations agencies engaged in surveying the population and, in particular, with WFP, which had provided immediate assistance to more than three times as many people in the country in 2008, and the United Nations Development Programme (UNDP), which was currently in negotiations with the Government of the Democratic People's Republic of Korea regarding the possible resumption of operations in the country, with a view to developing sustainable agriculture and ensuring long-term food security. In that regard, he

noted that a comprehensive approach by the entire United Nations system was essential.

45. Despite such developments, the people of the Democratic People's Republic of Korea continued to be subject to systematic rights violations and frequent acts of violence at the hands of the authorities, with particularly devastating consequences for women and children. He invited the Democratic People's Republic of Korea to cooperate actively with him and welcomed the fact that the country would be subject to review by the Human Rights Council in 2009. Once again OHCHR stood ready to provide the assistance of its experts, assistance which the country had always refused even though it could play a crucial future role in judicial and prison system reform, beginning with issues related to juvenile justice and impunity, which must be combated at the local and, if necessary, international levels. Civil society in the Democratic People's Republic of Korea was very active in the area of combating impunity. Furthermore, progress made in the framework of the Six-Party Talks, which focused mainly on denuclearization, could pave the way for a new dialogue on humanitarian issues.

46. Noting that the decline in the number of asylum-seekers from the Democratic People's Republic of Korea might be due to stricter border controls or tougher penalties against those who returned to the country, he called on host countries — where UNHCR was doing a remarkable job — to treat refugees humanely, whether they were traditional refugees fleeing potential or actual persecution or refugees *sur place* who feared reprisals after having left the Democratic People's Republic of Korea, including because they had not obtained the exit visa required by Pyongyang. Host countries must, in particular, respect the principle of non-refoulement. In other words, they must not expose refugees once again to the dangers they had fled by expelling them or returning them to the border. The latter had been taken into account in the Declaration on Territorial Asylum. At the same time, the Democratic People's Republic of Korea must address the root causes which prompted many of its citizens to go into exile in the first place. The country could go some way to restoring its international reputation by officially adopting a lenient approach towards refugees from the Democratic People's Republic of Korea who returned home. The principle of the responsibility to protect, which was applicable in situations of genocide, ethnic cleansing, crimes against humanity, and war crimes was still not being respected. For that reason, non-governmental organizations had collected information which would enable the relevant international bodies to investigate the matter.

47. Lastly, with regard to the long-standing issue of the abduction of foreign nationals, he called on the Democratic People's Republic of Korea and Japan, in the spirit of the Pyongyang Declaration, to cooperate in an active and more transparent manner with a view to finding, through friendly means, practical solutions satisfactory to both parties.

48. **Mr. Falk** (Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967) said that he had not yet received permission to visit the area. In his report (A/63/326), he had described the situation as accurately as possible, denounced human rights violations, and assessed existing issues in the light of international humanitarian law, international human rights law and, in particular, the duties of Israel as the occupying Power.

49. After the Annapolis summit of 2007, Israel had increased the number of checkpoints and obstacles to free movement and had continued to build settlements in the West Bank. Although the ceasefire signed in June 2008 between Gaza and Israel had led to a decrease in political violence, it had not brought about an easing of the regime of confinement and siege imposed on the Gazan population. Palestinians who sought medical treatment outside Gaza were frequently denied exit permits. That denial had caused a number of tragic deaths and severe mental and physical suffering and was a violation of the duty of the occupying Power. The restrictions imposed by Israel could not be justified by security concerns and were a violation of article 33 of the Fourth Geneva Convention, which prohibited the "collective penalties" imposed on the population of Gaza since July 2007.

50. Recalling the Israeli Government's refusal to comply with the advisory opinion of the International Court of Justice on the legal consequences of the construction of a wall in the Occupied Palestinian Territory (A/ES-10/273 and Corr.1), he called on the Security Council to ensure implementation of that advisory opinion and said that the General Assembly should ask the Court to issue a second advisory opinion, on the Palestinians' right to self-

determination, which was a fundamental norm of customary international law. Given the persistent violation of Palestinians' rights and the hardships they had endured during more than 40 years of occupation, it was incumbent on the United Nations to exercise its responsibility to protect.

51. Restrictions on the individual and collective rights of Palestinians living in Gaza exceeded necessary security measures. The refusal to grant exit permits to an estimated 250 students with fellowships for study abroad and the decision not to allow the Director of the Palestinian Centre for Human Rights to attend conferences outside Gaza were but two examples of the many restrictions that hindered the development of an educated and informed Palestinian society.

52. Recalling the six recommendations contained in his report, he said that all relevant United Nations agencies should take serious note of Israel's failure to fulfil its Annapolis summit pledges to halt settlement expansion, ease freedom of movement in the West Bank and attend to the humanitarian needs of Palestinians under occupation; the United Nations should explore its own responsibility with respect to the well-being of Palestinians living under unlawful conditions of occupation, with a particular focus on abuses of border control, freedom and independence of journalists and the general crisis in health care, particularly in Gaza; members of the international community, including the United Nations, should resume economic assistance as a matter of the highest priority; and, with a view to ensuring respect for the Geneva Conventions, the Government of Switzerland, as the depositary of those instruments, should be urged to convene a meeting of States parties to explore how they might carry out their legal duties in that regard.

53. The responsibility of Member States towards Gaza's civilian population depended neither on whether Hamas satisfied the political conditions set by Israel, nor on whether the ceasefire held.

54. **Ms. Schonmann** (Israel) said that she was dismayed, but hardly surprised, by the Special Rapporteur's report. The review of the Special Rapporteur's mandate, initially scheduled during the March 2008 session of the Human Rights Council and later postponed until September 2008, had not taken place owing to pressure from certain Member States, despite changes in the situation on the ground. As a result, both the report and the very integrity of the Council had been undermined. Moreover, it was surprising that a person who held such highly politicized views had been appointed Special Rapporteur, given that mandate holders were supposed to be impartial and objective and to possess personal integrity. It should also be noted that, with the exception of certain Israeli sources, the identities of the sources cited in the report had not been revealed.

55. The report's legitimization of Hamas, a group recognized throughout the world as a terrorist organization, was an affront. Its repeated assertions that Israel had imposed certain conditions that Hamas must fulfil in order not to be considered a terrorist organization were unfounded; the Quartet, followed by the international community as a whole, had imposed those conditions. The biased nature of the report was demonstrated by the fact that it dealt at length with Israel's defensive measures but failed to use the word "terrorism", speaking instead of a "right to resist", and by the fact that it criticized the Israeli Defense Forces (IDF) for closing certain institutions but turned a blind eye to the true nature of those institutions. The report painted a bleak picture of health conditions in Gaza and the West Bank but failed to recognize that Israel had granted tens of thousands of Palestinians permission to enter its territory for medical treatment and that its own population was traumatized. Moreover, it wrongly asserted that the Gaza Strip was an occupied territory over which Israel exercised effective control. The report also described restrictions on the entry of goods into Gaza but failed to mention that border crossings were regularly attacked by terrorists and that humanitarian assistance channels were often abused.

56. Israel supported self-determination for the Palestinian people and a two-State solution, but also had to protect itself. In searching for answers to such questions, Israel was ready to engage in a constructive discussion. It was regrettable that the Special Rapporteur's report could not contribute to such a debate.

57. **Mr. Mansour** (Observer for Palestine) said that he hoped the Special Rapporteur would be allowed to visit the region in order to assess the situation for himself. The Palestinian Authority would do everything in its power to facilitate such a visit.

58. Regarding the Israeli representative's criticism that the Special Rapporteur's report lacked objectivity, he recalled that numerous United Nations reports denounced Israel's refusal to fulfil its obligations under the road map, end settlement activities, dismantle checkpoints in the West Bank, lift the siege of Gaza, reopen institutions in East Jerusalem and release prisoners — demands also made by the Quartet and the Council of the European Union. It was high time for Israel to understand why it faced such massive opposition and to make a good faith effort to fulfil its obligations under international law and respect both the Geneva Conventions and the relevant United Nations resolutions so that the peace process might be advanced and a treaty granting the Palestinian people their own State, with East Jerusalem as its capital, concluded. The Palestinian people, assisted by the international community as a whole, were making great efforts to arrive at a peace treaty. Israel should modify its behaviour on the ground and respect the provisions of international law, in particular international humanitarian law.

59. **Mr. Ramadan** (Lebanon) said that, assuming that the International Court of Justice agreed to conduct a legal assessment of the Israeli occupation from the perspective of the Palestinians' right to self-determination, he was curious as to how the international community would be able to induce Israel to respect the Court's opinion, particularly since the Security Council was failing to fulfil its responsibilities in respect of peace and security in Palestine. Recalling article 50, paragraph 3, of the Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I), which stated that the presence within the civilian population of individuals who did not come within the definition of civilians did not deprive the population of its civilian character, and article 51, paragraph 2, of the same Protocol, which stated that the civilian population as such, as well as individual civilians, should not be the object of attack, he wondered whether Israel's indiscriminate attacks against civilian areas — even if a priori they were targeted at combatants — might be considered flagrant and systematic violations by the occupying Power. Furthermore, given that the occupying Power maintained a siege of Gaza and controlled its entry/exit points, he wondered whether it was correct, from a legal perspective, to state that the Gaza Strip was still under occupation. Lastly, recalling the non-violent struggle espoused by Gandhi, he wondered whether Member States had an obligation under international humanitarian law and human rights law to end that siege, which was illegal.

60. **Mr. Gonnet** (France), speaking on behalf of the European Union, expressed regret that thus far the Special Rapporteur had been unable to visit either Israel or the occupied territories. He called on the Israeli Government and the Palestinian Authority to cooperate with the Special Rapporteur by granting him free and unfettered access and asked how the international community could contribute in that regard. Furthermore, he expressed concern at the violations of human rights and fundamental freedoms in the occupied territories and wondered what practical measures United Nations agencies could take to improve the situation, in cooperation with the Israeli and Palestinian authorities.

61. **Mr. Prabowo** (Indonesia) said that, 60 years after the Nakba and despite the international community's efforts, the fundamental rights of the Palestinians living in the occupied territories continued to be violated and their access to basic services restricted. The health situation in Gaza and the West Bank, in particular, was extremely serious. He wondered what the international community could do to advance the crisis effectively.

62. In July 2008, Indonesia had hosted, in Jakarta, the Ministerial Conference on Capacity-Building for Palestine, which it had co-chaired with South Africa. Participants in the Conference, which had been organized in the framework of the New Asia-Africa Strategic Partnership (NAASP), had pledged to implement, over a period of at least five years and on a needs basis, projects aimed at accelerating the development of the Palestinian people. The outcome document of the Conference had been published as document A/62/946-S/2008/58. Any Member State wishing to contribute to the initiative should contact the Indonesian delegation.

63. Echoing the Special Rapporteur, he deplored the fact that Israel continued to build settlements and restrict freedom of movement in the West Bank, in disregard of the Annapolis Understanding. He also deplored the construction of the separation wall, the excessive use of force and the harassment of journalists at border crossings.

64. **Mr. Naimeni** (South Africa), aligning his delegation with the statement made by the representative of Indonesia, said that the peace process had reached a critical juncture. The deadline set at the Annapolis Summit was drawing near and, despite assurances that negotiations were continuing, the situation on the ground had not improved significantly. Where human rights were concerned, the situation had worsened. The denial of access to the occupied territories would be highlighted continuously at both the Human Rights Council and the Committee. He wished to know what additional support the international community could provide in that regard.

65. **Mr. Ja'afari** (Syrian Arab Republic) said that the Special Rapporteur's report stated some important truths regarding the human rights situation in the occupied Palestinian territories. Recalling that much had been said about Israel's violation of those rights, he stressed that a key element of the Special Rapporteur's recommendations was Israel's legal responsibility, a responsibility which Israel had shirked for decades, for reasons known to all. He wondered what could be done to ensure that those recommendations were implemented effectively and mechanisms for holding Israel accountable legally and politically established, so that Israel was forced to end its crimes against the Palestinian people in the occupied territories. By refusing to allow the Special Rapporteur to visit the occupied territories, Israel was committing not only a violation but also a crime since it was disregarding the will and determination of the international community. Dozens of other special rapporteurs and commissions of inquiry had also been refused access by Israel when attempting to fulfil their mandates, simply because it was not currently possible to hold Israel accountable. The Special Rapporteur's recommendations should, therefore, be included in a resolution so that Israel would be held accountable should it refuse to implement them.

66. **Mr. García Collada** (Cuba) said that, despite the commitments made at Annapolis in 2007, the Palestinian people continued to be massacred and Israel continued to build settlements and hinder freedom of movement. His delegation condemned and denounced the annexation of land, the excessive use of force, the failure to make any distinction between combatants and civilians, the inhumane treatment of children and the construction of the wall, the illegality of which had been reaffirmed by the International Court of Justice in June 2008. He wondered how the international community could ensure that an opinion of the Court was implemented when, on 29 occasions, the United States had exercised its right to veto in the Security Council to prevent Palestinians from enjoying their rights.

67. **Mr. Saeed** (Sudan), welcoming the report of the Special Rapporteur, said that Israel continued to flout United Nations resolutions on strengthening the legal rights of peoples living under occupation, in particular their right to self-determination. The occupying Power's lack of credibility when it came to peace initiatives was demonstrated by its continued settlement building and the proliferation of checkpoints. The fact that it continued to deny its ongoing violations of both international humanitarian law and the Fourth Geneva Convention and refused to implement Security Council resolutions went against the will of the international community.

68. He wondered what destructive consequences the Israeli occupation would have on the food and health situation of the inhabitants of Gaza and the West Bank, whose suffering spoke loudly to the human conscience; how the international community could assist the civilian population; and what the Organization could do about Israel's violations of the freedom of the press and its aggressive behaviour towards journalists.

69. **Mr. Falk** (Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967) expressed regret that Israel considered it acceptable to attack him when throughout his career he had championed justice and freedom and had advocated non-violent solutions. He hoped to be able to engage in dialogue with Israel, which was making a mistake by preventing him from entering its territory and the occupied territories. By refusing to halt its policy of settlement building, in accordance with the Annapolis Understanding, Israel was not only violating the Geneva Convention but also giving the impression that it did not truly seek peace. The plight of Palestinians must be made known and International Court of Justice opinions, international law and human rights law respected. Any impartial person would have reached the conclusions contained in his report.

The meeting rose at 1 p.m.